Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

No. 77-1495

PAUL W. MILLER, JR.

Petitioner

V.

THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY LOCAL UNION NO. 198

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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To the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, a member of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local Union No. 198, original petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, rendered January 20, 1978.

CITATION TO THE OPINION BELOW

The opinion of the United States Court of Appeals, Fifth Circuit, will not be reported. The opinion is appended hereto as Appendix A. The opinion and judgment of the United States District Court for the Middle District of Louisiana, from which appeal was taken, is not reported but is appended hereto as Appendix B.

STATEMENT OF JURISDICTION

(1) The Court has jurisdiction to consider and grant this petition pursuant to Title 29, United States Code, Sec. 411, et sec.

(2) The date of the original opinion below was January 20, 1978. This petition is being filed within the time prescribed by Title 28, United States Code, Sec. 2101.

THE QUESTIONS PRESENTED

The questions presented by this petition for writ of certiorari are (1) whether the petitioner's suit was properly dismissed summarily, or whether a full trial should be had on the merits for a proper determination of plaintiff's rights, and (2) whether as a matter of law the plaintiff's employment could be terminated if the termination was being used to discipline him for political activities; i.e., should this matter be opened up for a trial on the merits to show the motivation behind the termination of the petitioner's employment.

STATEMENT OF THE CASE

This case is before the Court upon appeal from the United States Court of Appeals, Fifth Circuit, and involves a complaint of a violation of Title 29, United States Code 411, et

sec., and Title 29, United States Code 529. As shown in the petition, attached hereto as Appendix "C", the petitioner herein is the employee of a joint management labor educational trust and it is alleged that the petitioner was terminated from his employment with said joint educational trust because of his political activity in campaigning against the individual who became business manager of the union.

The defendant filed a Motion for Summary Judgment and certain factual circumstances were stipulated to by counsel for both parties which said stipulation is attached as Appendix "D". Thus the issues have been simplified as to whether a trial on the merits should be held delving into the motive and procedure by which the petitioner was terminated from his employment to allow him an opportunity to prove that he lost his job due to an act of discipline on the part of the union business manager because of his prior political activity.

REASONS RELIED ON FOR GRANTING THE WRIT

The Circuit Courts of Appeal have basically split on the question of an interpretation of discipline as a result of political activity. In *Grand Lodge of International Assn. of Machinists vs. King* (1963 DC Cal.) 215 Fed. Supp. 351, affmd. (CA 9th Cal.) 335 Fed. 2d 340, cert. den., 379 U.S. 920, 13 L.Ed. 2d 334, 85 S. Ct. 274; and *DeCampli vs. Greely* (Dc-N.J.) 192 F. Supp. 746 (1968), the courts held that termination of the employment of Grand Lodge representatives, although within the discretion of the international president was not so within his powers when used for the purpose of disciplining one of the employees. The Court went on in the Grand Lodge case to say:

> "When an officer asserts that the broad discretion to hire and fire, granted to him by the organic law of a union, may be exercised without restraint or limitation against open and honest union election

activities of employee-members of the union, he urges a doctrine which finds support neither in law nor in sound union tradition."

The Fifth Circuit Court of Appeals has generally followed the *Wambles vs. The International Brotherhood of Teamsters, Chauffeurs*, 488 Fed. 2d 888 (CA 5th, 1974), which dealt with the firing of a union officer for political activity contrary to the ultimately elected party. There were some policy considerations in this decision since it was felt that political friction between two union officers would unduly hamper the running of union affairs and thus, although the Fifth Circuit Court of Appeals tends to follow a more restrictive view of the idea of actionable discipline, the leading case from the Fifth Circuit can be easily distinguishable since there are no policy considerations of that nature in the case at bar.

In this case the petitioner has been dismissed from a job with an employer other than the union itself but nevertheless subject to a great deal of control by the union, said dismissal being sought because of his political activity. The petitioner herein has contended that such action constitutes a violation of his rights secured under the provisions of Section 411 a(1) and a(2) and 529 of the LMRDA. The petitioner feels that he should have an opportunity to present matters showing the motivation and actions of the union hierarchy in securing his dismissal and these are facts which should be fully aired in a full trial on the merits.

The very simple and concise issue which must be decided is whether, as a matter of law, a union or its elected officers can use its influence to terminate the employment of a member with a trust over which the union exercises a great deal of control and influence and thereby discipline said member. Only if this is decided as a matter of law should petitioner not be allowed to present all of his evidence in a full trial

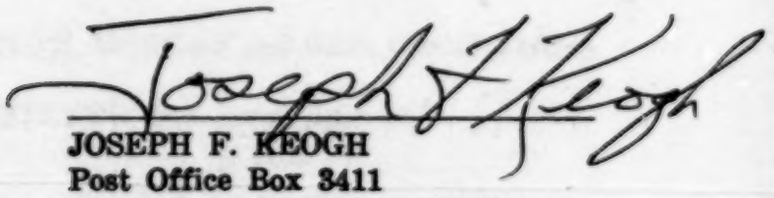
on the merits and it is petitioner's contention that the motivation behind his termination is of crucial importance to the proper decision as to whether he has been disciplined and is the subject of a full trial on the merits. After reviewing the foregoing cases and the detailed discussion of the split in the circuits in the DeCampli case cited earlier it is clear that this Honorable Court should grant writs for the purpose of settling the law between the conflicting circuit courts of appeal and petitioner believes that since writs were denied in the Grand Lodge case cited earlier that decisions supporting a liberal interpretation of what constitutes discipline will be the decision of this Honorable Court, thus allowing the petitioner a full trial on the merits.

CONCLUSION

WHEREFORE, it is respectfully submitted that this petition for certiorari to review the judgment of the Court of Appeals for the Fifth Circuit should be granted.

Respectfully Submitted,

By Attorney,



JOSEPH F. KEOGH
Post Office Box 3411
Baton Rouge, Louisiana 70821

CERTIFICATE

I hereby certify that I have mailed a copy of the above and foregoing Brief to Mr. C. Paul Barker, 1400 Richards Building, 837 Gravier Street, New Orleans, Louisiana 70112 this 18 day of April, 1978.

Joseph F. Keogh

JOSEPH F. KEOGH

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-1981
Summary Calendar*

PAUL W. MILLER, JR.,
Plaintiff-Appellant,

versus

HENRY B. HOLDEN, Et Al.,
Defendants-Appellees.

Appeal from the United States District Court for the Middle District of Louisiana

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(January 20, 1978)

BEFORE AINSWORTH, MORGAN and GEE, Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1]

Dist. Ct. opinion in 95 LRRM 2156

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*Rule 18, 5 Cir., see Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5 Cir. 1970, 431 F.2d 409. Part I.

1. See N.L.R.B. v. Amalgamated Clothing Workers of America, 5 Cir. 1970, 430 F.2d 966.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF LOUISIANA

PAUL W. MILLER, JR.,

Plaintiff

versus

HENRY B. HOLDEN, PEARSON HOLDEN, HOUSTON NORTHROP, WILLIAM ELGIN, SPENCER COSPER, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 198 EDUCATIONAL TRUST, and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY LOCAL UNION NO. 198,

Defendant

CIVIL ACTION

NO. 74-308

JUDGMENT

This cause came before the Court, Honorable E. Gordon West, District Judge, presiding, on a motion for summary judgment by the only remaining defendant in the case, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 198, and the Court having considered the record and duly rendered an opinion for written reasons assigned and filed herein,

IT IS ORDERED AND ADJUDGED that judgment be entered herein in favor of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 198, and against plaintiff, Paul W. Miller, Jr., dismissing plaintiff's case at his cost.

Baton Rouge, Louisiana, March 30, 1977.

/s/CHARLES H. BANTA
Clerk

APPROVED:
/s/E. GORDON WEST
United States District Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PAUL W. MILLER, JR.

Versus

HENRY B. HOLDEN, PEARSON HOLDEN, HOUSTON NORTHROP, WILLIAM ELGIN, SPENCER COSPER, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 198 EDUCATIONAL TRUST, and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY LOCAL UNION NO. 198

CIVIL ACTION
NUMBER 74-308

* * * * *

E. GORDON WEST, District Judge:

Plaintiff originally brought this suit against the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local No. 198 Education Trust (hereinafter referred to as "The Trust"), four union members who served as Trustees, and one management-appointed Trustee, and United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry Local Union No. 198 (hereinafter referred to as "Local 198"). After the original hearing before this Court, plaintiff's suit was dismissed for lack of jurisdiction. On appeal, the United States Fifth Circuit Court of Appeals affirmed the dismissal as to all defendants except Local 198

and remanded the case to this Court for reconsideration of plaintiff's claim against Local 198 insofar as that claim was based upon alleged violations of the Landrum-Griffin Act, 29 U.S.C. §§411(a)(1) and (a)(2). See *Miller v. Henry B. Holden*, et al, 535 F.2d 912 (CA 5 - 1976).

After remand, counsel for both parties entered into a stipulation of facts, a copy of which is attached hereto, and the case was again submitted on a new motion for summary judgment filed by defendant, Local 198. Now, after due consideration of the record as it now stands, including the stipulation of facts upon which the case has been submitted, and after careful consideration of the opinion of the Court of Appeals previously entered in this case, the Court concludes that defendant's motion for summary judgment should be granted.

At the time of plaintiff's termination as Training Coordinator for the Trust, which termination forms the basis of his complaint, he was a member in good standing of Local 198. He is still a member in good standing of that union and his membership and activities within the union have in no way been impaired, altered or affected as a result of his termination as Training Coordinator for the Trust. This Court previously found, and the Court of Appeals agreed, that the Trust is an independent entity with a "separate existence from the union." The Trust is administered by ten Trustees, five of whom are appointed by management, and three of whom hold the position of Trustee by virtue of an office they hold in the union, and two of whom are independently elected by the union membership at large. All business of the Trust is administered by the Trustees who act as a body and by majority vote. It is the Trustees who hire and fire the Training Coordinator. Local No. 198, as such, has no voice in the selection of employees or officers of the Trust. Their five members who serve as Trustees have influence, of course,

but they have no greater influence than do the other five Trustees appointed by management. Local No. 198 has no bargaining agreement with the Trust, and they have no power to strike the Trust, or to take any other action against it should they be unhappy with the decisions of the Trustees. It also has no way to reward the Trust for decisions of the Trustees which it considers favorable. In other words, the Trustees act independently for the benefit of the Trust, and as a body they are neither subservient to the union nor to management. It takes a majority vote of the ten Trustees to hire or fire the Training Coordinator. In the instant case, the vote to terminate plaintiff's employment was 8 to 2. Four union appointed Trustees voted in favor of termination and four management appointed Trustees voted with them. One union appointed Trustee and one management appointed Trustee voted against termination. There is nothing in the stipulation of facts to indicate any wrongdoing or coercion of any kind on the part of any of the Trustees or on the part of any union official.

In June of 1974, during the campaign for elective offices in Local 198, plaintiff actively campaigned for one Joseph A. Clebert for Business Manager. Clebert lost and Pearson "Whitey" Holden was elected. During the campaign Mr. Holden made no secret of the fact that if he were elected he would seek to have the plaintiff replaced as Training Coordinator for the Trust. This was apparently one of his campaign promises. The reasons for his wanting plaintiff replaced are in dispute, but there is certainly nothing wrong with Mr. Holden's wanting him replaced for whatever reason he may have had. It would only be wrong if there were some illegal means used to bring about his replacement.

The day to day details of the operation of the apprenticeship training school conducted by the Trust are generally supervised by a Joint Apprenticeship Training Committee

(JATC) which is composed of ten members. Five of these members are appointed by the five management appointed Trustees and the other five are appointed by the elected Business Manager of the union. On August 1, 1974, when the question of replacing the plaintiff as Training Coordinator for the school came up, the Trustees sought the recommendation of the JATC. "Whitey" Holden had, in July of 1974, taken his seat on the Board of Trustees after his election as Business Manager in June, 1974. On August 7, 1974, he appointed five new members to serve as union representatives on the JATC, and on the evening of that same day, the JATC, by a majority vote, recommended to the Trustees that the plaintiff be replaced as Training Coordinator.

There was nothing wrong with Mr. Holden appointing his five new members to serve on the JATC. This was his right as the duly elected Business Manager. If he appointed people whom he expected to vote for the replacement of the plaintiff as Training Coordinator, he was doing nothing more than he had promised to do during his campaign, i.e., to attempt to have Mr. Miller replaced as Training Coordinator. Mr. Miller had no proprietary interest in that job. He was not hired for a specified term. He was subject to replacement at any time by the Trustees. By merely exercising his right as Business Manager to appoint new members to serve on the JATC, and by exercising his vote as a Trustee for the Trust, Mr. Holden did not deprive the plaintiff in any way of the rights protected by Title 29, U.S.C. §411. There is no indication of any kind that Mr. Miller was deprived of the right ". . . to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings . . ." as guaranteed by §411(a)(1). Nor is there any indication that he was in any way deprived of the right ". . . to meet and assemble freely with other members, and to express any views, arguments, or

opinions; and to express at meetings of the labor organization his views upon candidates in an election of the labor organization or upon any business properly before the meeting . . ." as guaranteed by §411(a)(2). Indeed the plaintiff freely exercised all of these rights during the campaign with no restraint. He simply backed a loser. The winner had certain rights which were inherent in his victory. One of these rights was the privilege of appointing five members to serve on the JATC and another was the privilege of sitting and voting as one of the Trustees of the Trust. It would be most unusual if the newly elected Business Manager had appointed five persons to the JATC who were opposed to his views. As a matter of fact, it would probably have been unfair to those members of the union who elected him based upon his campaign representation had he done so. He had a right to his own "Administration" as Business Manager so long as the exercise of that right did not unduly infringe upon protected rights of others. All of plaintiff's rights which are protected by Title 29, U.S.C. §§411(a)(1) and (a)(2) were freely exercised by the plaintiff, and they were in no way infringed upon by the exercise of rights belonging to Mr. Holden as Business Manager of Local 198.

There is no evidence of any coercion on the part of Local 198 or its officers insofar as the replacement of plaintiff as Training Coordinator is concerned. There is, of course, evidence of union politics at work, but there is not, and there should not, be any prohibition against that. See *Sewell v. Grand Lodge of Int. Ass'n. of Machinists*, 445 F.2d 545 (CA 5-1971), cert. den. 404 U.S. 1024, 92 S.Ct. 674; *Wambles v. Int. Brotherhood of Teamsters*, 488 F.2d 888 (CA 5-1974). The simple fact is that a majority of the duly appointed members of the JATC recommended to the Trustees that the plaintiff, Mr. Miller, be terminated as Training Coordinator for the school operated by the Trust, and a majority of the duly elected and appointed Trustees of the Trust agreed with

that recommendation. This they had a right to do under the circumstances of this case.

For these reasons, the Court concludes that the plaintiff has failed to prove any violations of Title 29, U.S.C. §§411 (a)(1) and (a)(2), and that as a matter of law, the defendant Local 198 is entitled to a summary judgment dismissing this suit. Judgment will be entered accordingly.

Baton Rouge, Louisiana, March 30, 1977.

/s/E. GORDON WEST
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PAUL W. MILLER, JR.

versus

HENRY B. HOLDEN, PEARSON HOLDEN, HOUSTON NORTHROP, WILLIAM ELGIN, SPENCER COSPER, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 198 EDUCATIONAL TRUST, and UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY LOCAL UNION NO. 198

CIVIL ACTION
NO. 74-308

FILED: _____

COMPLAINT

_____:**DY. CL.**

TO THE HONORABLE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF LOUISIANA:

The petition of Paul W. Miller, Jr., a resident of lawful age of the Parish of East Baton Rouge, Louisiana and the Middle District of Louisiana and a member in good standing of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local Union No. 198 alleges:

1.

That the jurisdiction of this Honorable Court is based on Section 102 Public Law 86-257, commonly called the Landrum-Griffin Act.

2.

That Henry B. Holden, Pearson Holden, Houston Northrop, William Elgin, Spencer Cosper, The United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust, and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local Union No. 198 hereinafter referred to as Local 198, are violating the Landrum-Griffin Act by interferring with members rights to free speech and political expression in the following particulars:

3.

That on the 3rd day of June, 1974, the Local 198 held a general election for all officers. Complaintant, Paul W. Miller, Jr., a member of said union, openly expressed his views in support of the candidate opposing Pearson Holden for the office of Business Manager. Pearson Holdon won the election and is currently Business Manager.

4.

The Complaintant is currently employed by the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust as Training Coordinator. Complaintant was informed that due to his views and activity during said election that he would lose his employment as Training Coordinator for said Local 198.

5.

That the position of Training Coordinator is a full time compensated position authorized in accordance with an Educational Trust and controlled by a Board of Trustees, one-half of whom are appointed by the union and one-half by contractors. There is also an Apprenticeship and Training Committee appointed in the same manner.

6.

That defendant, Pearson Holden, took office in July, 1974 and at the August 1, 1974 meeting of the Board of Trustees of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust moved to remove Complaintant from office. Upon realization that this motion would not pass, defendant, Pearson Holden, withdrew the motion and a motion was made and passed to refer this matter to the Apprenticeship and Training Committee. At the conclusion of this meeting, Pearson Holden stated that in order to assure that all union members on the committee voted to fire Complaintant, that he, Pearson Holden, would replace all five union members.

7.

That subsequent to the referral of this matter to the Apprenticeship and Training Committee, Pearson Holden acting as Business Manager and in furtherance of the plan to remove Complaintant, did in fact carry out his threat and replaced all union members of the committee with members instructed to vote for the dismissal of Complaintant.

8.

That in addition, Henry B. Holden, Pearson Holden, Houston Northrop and William Elgin entered into a conspir-

acy to pressure contractors which contractors had appointed members on the committee with the goal of influencing their representative to vote in the committee to discharge Complaintant, all as will be more fully shown on the trial hereof. Also that Spencer Cosper is a contractor's representative and succumbed to the pressures which were brought to bear as above mentioned and voted to terminate the Complaintant's employment.

9.

That union charges were preferred against Henry B. Holden, Pearson Holden, Houston Northrop and William Elgin for using job loss as a form of discipline and for interferring with Complaintant's right of free speech. These charges were dismissed by the Union Executive Board, which dismissal is being appealed within the union by Complaintant herein.

10.

That during the hearings on these charges, various statements were made by Pearson Holden and others indicating the compelling reason for the dismissal of Complaintant was his union political activity. These proceedings and statements were recorded on recording discs. These discs are susceptible to loss, mutilation, tampering and therefore an order should be issued herein to the United States Marshall ordering that said discs be seized, sealed and deposited with the Clerk of Court until a hearing can be had as to the admisability of these matters and/or until a trial on the merits of this case.

11.

That on November 1, 1974 Complaintant received notification of termination of his employment effective on November 15, 1974. Complaintant will be irreparably harmed by the termination of his employment and therefore a temporary

restraining order and preliminary injunction should issue enjoining the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust from terminating Complaintant's services and a rule to show cause should issue to defendant, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local No. 198 Educational Trust, to show cause why a permanent injunction should not issue as authorized by Section 102 of the Landrum-Griffin Act and alternatively, that Complaintant be reinstated with back pay and the full benefits and privileges due him as Training Coordinator.

12.

That this improper use of influence on Complaintant's employer, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local No. 198 Educational Trust, and their reaction to the influence by the termination of his services is in violation of Section 8a (1) and (3) and 8b (1)A and (2) of the National Labor Relations Act. This manner of discipline by the union is also violative of Section 101a (1), (2), and (5) of the Landrum-Griffin Act.

13.

As a result of defendants' actions, Complaintant has suffered irreparable damages consisting particularly but not exclusively of an ulcer, nervous tension, anxiety, embarrassment, and humiliation and is therefore entitled to damages herein in the sum of ONE HUNDRED THOUSAND AND 00/100 ($100,000.00) DOLLARS, together with legal interest from date of judicial demand until paid and for reasonable attorney's fees to be fixed by this Honorable Court.

WHEREFORE, COMPLAINTANT PRAYS that a temporary restraining order and preliminary injunction should issue enjoining the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust from terminating Complaintant's service and a rule to show cause should issue to defendant, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local No. 198 Educational Trust, to show cause why a permanent injunction should not issue as authorized by Section 102 of the Landrum-Griffin Act and alternatively, that Complaintant be reinstated with back pay and the full benefits and privileges due him as Training Coordinator.

COMPLAINTANT FURTHER PRAYS that an order for a subpoena duces tecum be issued herein to the United States Marshall ordering that certain recording discs pertaining to the hearings held by the Union Executive Board concerning these proceedings be seized, sealed and deposited with the Clerk of Court until a hearing can be had as to the admissability of these matters and/or until a trial on the merits of this case.

COMPLAINTANT FURTHER PRAYS that the defendants be duly served and cited to appear and answer this Complaint, and that after all legal delays and due proceedings had, there be judgment herein in favor of Complaintant, Paul W. Miller, Jr., and against the defendants, Henry B. Holden, Pearson Holden, Houston Northrop, William Elgin, Spencer Cosper, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local No. 198 Educational Trust, and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry Local Union No. 198, jointly and in solido, in the full and true sum of ONE HUNDRED THOUSAND and NO/100 ($100,000.00) DOLLARS,

together with legal interest from date of judicial demand until paid, and for reasonable attorney's fees to be set by this Honorable Court, and for all costs of these proceedings.

KEOGH & KEOGH

JOHN R. KEOGH
P. O. Box 3411
Baton Rouge, Louisiana

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

PAUL W. MILLER, JR.

Vs.

HENRY B. HOLDEN, ET AL

CIVIL ACTION
NO. 74-308

STIPULATION OF FACTS

I.

THE TRUST AGREEMENT, CONTRACTS AND APPRENTICESHIP TRAINING SCHOOL

The Plumbers and Pipefitters Local 198 Educational Trust Plan was established in 1959. This is Taft-Hartley Sec. 302 bilateral trust established pursuant to and in conformity with the provisions of this Section, 29 USC 186. In accordance with the provisions of this federal statute two documents are required, a collective bargaining agreement between the local union and employer or employers or their associations covering employees and providing for contributions on an hourly basis to a trust fund set up by the trustees. Secondly, an agreement and declaration of trust providing for an equal number of trustees representing management and an equal number representing the employee (union) with provisions for the establishment of educational plans for the benefit of employees, their families and dependents and the collection and distribution of the funds. There are two principal collective bargaining agreements in the Baton Rouge area to which substantially all of the employers subscribe. These are

agreements between the Industrial Contractors Association of Baton Rouge and Vicinity and the Associated Mechanical Contractors of Baton Rouge, Inc. The Union, these two associations, their member employers, along with a third employer association known as the Refrigeration and Air Conditioning Contractors of Baton Rouge, no longer in existence, created the Trust. The Associations appoint the five management trustees. The Trust itself provides for their terms and replacements. Three of the Union trustees become trustees by virtue of election to office of Business Manager, Business Agent and President in the union and the other two are independently elected by the members. The trustees act as a body by majority vote. The trustees manage the funds and conduct an apprenticeship training school to which employees and prospective employees of all the various employers, their families; members of the union and their families and any candidate qualified are eligible to participate in apprenticeship or more advanced training. The school is assisted in its training programs by the Federal Apprenticeship Training Department of the Department of Labor and the Louisiana State Apprenticeship Training Department and must comply with Federal and State laws, including Equal Employment laws.

The school is conducted at night without charge to the apprentice or trainee. The trustees are responsible for the ultimate approval of funds, building, personnel, programs and operation of the school. The details of its operation are generally supervised by a Joint Apprenticeship Training Committee, herein called JATC, of ten men. The five management trustees acting for the employers appoint five management representatives to serve on the JATC. The five union representatives on the JATC are appointed by the elected business manager of the union. The JATC meets once a month and more often when needed. The JATC pass on qualifications and supervision of apprentices and recommends the employment of instructors, personnel, budget and program to

the trustees. The day to day operation of the school prior to 1971 was in charge of a part-time Coordinating Instructor. In 1971 this position was changed to Training Coordinator and made a full time job. Many of the instructors are members of management holding either officership or superintendencies in various employers in Baton Rouge and the number of students has increased from 195 in 1970 to 466 in 1975. The contributions made by the employer on each hour worked by an employee in covered employment in the bargaining unit was 3½ cents per hour in 1970 through October, 1975. As a result of a new contract the contributions were increased to 6 cents per hour on November 1, 1975. Contributions are made on apprentices, journeymen, foremen and general foremen. These classes of men are covered by the union agreements.

The union does not represent as a collective bargaining agent any of the personnel employed by the school including instructors or the training coordinator nor is it necessary that any of them be members of the union. They are not hired through the union but are hired and terminated by the trustees on recommendation of the JATC. The union takes an active interest in the operation of the school since it is actually training sons, relatives and friends of members working in covered employment and of members of management with whom they have contracts. Management also takes an active interest in the management of the school since they work the apprentices and the quality of the work is proportionate to the quality of the training. Apprentices are indentured to the Joint Apprenticeship Training committee, that is to say, a contract signed between the State of Louisiana, the apprentice and the Joint Apprenticeship Training Committee to comply with recommended standards for training.

The collective bargaining agreements do not cover and do not require contributions on superintendents, assisting

superintendents, general managers or officers of the company, owners or partners. All of the management representatives serving either as trustees or on the JATC mentioned hereinafter in this Stipulation hold the rank of superintendent or above with their companies. The collective bargaining agreements are signed by individual employers or by the association on their behalf. All of the management representatives identified in this Stipulation represent employers who have collective bargaining agreements with the union and obtain their employees, including referred apprentices, through the union hiring hall. After an individual is referred out as a journeyman pipefitter he may be advanced by management to the role of foreman, general foreman or above this into superintendent and a representative of management. The trustees and JATC are identified on Appendix A.

Sample contracts with the Associated Mechanical Contractors of Baton Rouge, Inc., one of the employer associations, and the Industrial Contractors Association of Baton Rouge & Vicinity, Inc., the other employer association, for the years 1971 through March, 1973, are attached as Appendix B and C. The provisions of the contract have not been substantially changed in the agreement since that time. The trust agreement has been offered in evidence as Exhibit 1 at the original hearing.

II.

THE HISTORY OF THE JOB OF PAUL MILLER, JR. AS TRAINING COORDINATOR

1. Paul Miller, Jr. is a long time journeyman pipefitter member of Local 198. He has been an instructor in the Apprenticeship Training School since 1964. On August 26, 1970, the training coordinator Ernest E. Goff resigned and the Board of Trustees decided to appoint a new part-time training instructor. At a meeting on August 27, 1970, the Trustees

considered the resignation of Ernest E. Goff effective September 4, 1970. At a meeting on September 3, 1970, the Trustees accepted the resignation of Ernest E. Goff. Present were Jim Cornelius, Chairman (U),[1] George Esser (M), E. C. Frederick (M), Anthony Moore, Sr. (M), R. C. Atkinson (U), R. F. Turner (M), Joe Haufpauir (M), A. L. Durbin (U), Earl Simmoneaux (U) and Henry Holden (U). The trustees interviewed George Lovett, member of Local 198, Homer Martin, Baton Rouge City Parish Air Conditioning Inspector - instructor in school, Forest Elgin, instructor and superintendent of H. E. Wiese, R. C. Brummel, instructor and superintendent for H. E. Wiese,[2] for the position of part-time coordinating instructor. The Budget and Control Committee recommended the hiring of Mr. Brummel. Motion made by E. C. Frederick, seconded by Earl Simmoneaux, motion passed 9 for and 1 opposed. After R. C. Brummel accepted the position of part-time coordinator - instructor, as superintendent for H. E. Wiese & Co. he began a job in New Orleans, La. and found it impossible to serve as coordinator instructor, resigning two days later. The resignation was considered at a meeting of the Trustees on September 10 and accepted by motion of Frederick, seconded by Atkinson. The Trustees then interviewed R. J. Dauzat, Forest Elgin, Homer Martin and Paul Miller, Jr. On motion by Henry Holden (U) seconded by Earl Simmoneaux (U) the Trustees voted unanimously to hire Paul Miller, Jr. at the instructor's hourly rate of pay. At the time the training coordinator worked only at night while the school was in operation and such other hours as necessary but retained his regular job. Paul Miller, Jr. was a pipefitting foreman at the time.

2. On June 10, 1971 at a special meeting of the Trustees composed of Jim Cornelius (U), George Esser (M), E. C. Frederick (M), Henry Holden (U), R. F. Turner (M), Sidney

1. The Union representatives are designated by (U), management by (M).
2. H. E. Wiese is one of the larger employer contractors.

Blanchard (M), A. L. Durbin (U), R. C. Atkinson (U), Earl Simmoneaux (U) and Anthony Moore, Sr. (M), they voted to hire a full time training coordinator and at a meeting on June 17, 1971 outlined the duties as follows:

> The duties of Training Coordinator will be to assist the Joint Apprenticeship Sub-Committees in the operation of the Joint Apprenticeship Program.
>
> Schedule classes, instructors and apprentices for the normal operation of an apprenticeship training school.
>
> Order such material as necessary to each classes.
>
> Official hours should be from 1:00 P.M. to 10:00 P.M. when school is in session and 8:00 A.M. to 5:00 P.M. when school is not in session but whatever time as is necessary should be worked to see to the successful operation of the Apprenticeship Training School.
>
> Salary will be $250.00 per week with Pension and Health & Welfare Benefits.

On June 18, 19 and 20, 1971, the Trustees placed an advertisement in the Baton Rouge Morning Advocate newspaper for a training coordinator reading as follows:

> **Training Coordinator**
>
> Responsible for daily operation of apprenticeship training school. Schedule classes, instructors and apprentices. Work with joint sub committee on problems of curriculum and discipline. Hours 1 PM till 10 PM when school is in session, 8 AM to 5 PM when school is not in session. Salary $250 per week plus fringes. Send resume to Box F-733, c/o Morning Advocate. Only qualified applicants need reply.

Paul Miller, Jr. and others answered the advertisement.

On July 7, 1971, the Trustees interviewed two applicants, K. A. Isgett, a college professor, and A. B. Sibley, a supervisor in the Louisiana State Department of Education, for the job.

At the meeting of July 9, 1971, the Board of Trustees interviewed Joel Atkins, a member of Local 198, but employed as a Parish school teacher, and Mr. Paul Miller, Jr. for the job. Motion by Frederick seconded by Turner to hire Paul Miller, Jr. passed. Present were A. L. Durbin (U), George Esser (M), J. D. Albin (U), Earl Simmoneaux (U), Henry Holden (U), R. C. Atkinson (U), E. C. Frederick (M), R. F. Turner (M), Sidney Blanchard (M), Anthony Moore, Sr. (M).

On September 9, 1971, the Trustees adopted an oath to be taken by the training coordinator. Motion made by Atkinson (U) and seconded by Blanchard (M). The oath is as follows:

> I, as trustee or as administrator or coordinator do hereby pledge and obligate myself on my word of honor that I will, to the best of my ability, perform the duties and obligations of the office or job to which I have been duly elected or appointed, until my successor is duly elected and installed or until I have been terminated and notified by the Board of Trustees; that I will sacredly guard, protect and preserve and deliver to my successor or to the Board of Trustees, all books, papers, moneys or other property of this fund which may be in my possession at the conclusion of my official term or termination, and should the fund lapse or cease to function, I will convey and deliver all such books, papers, moneys or other property of this fund to the officer, person or persons legally authorized to receive same under the trust agreement of this fund, and I further pledge that all of my official acts while holding this position shall be just and honorable and will work for the success of the fund and the triumph of its principles.

The motion carried unanimously. This oath was not administered to Miller.

His duties and salary and benefits were substantially increased while he was in office as full time coordinator, including the hiring of a full time clerical secretary. There were from 12 to 17 instructors in the school regularly employed on part time during this period. For the number of apprentices see above. Miller reported directly to the JATC, who in turn, when necessary, recommended action to the Trustees. Miller occasionally dealt directly with the Trustees.

III.

THE TERMINATION OF PAUL MILLER, JR.

In June, 1974, there was an election for officers in Local 198. Paul Miller, Jr. actively campaigned for Joseph A. Clebert for business manager of the local. Whitey Holden was elected over Clebert.

The business manager Pearson "Whitey" Holden took office on July 1st. At the time the JATC was composed of 10 members, 5 appointed by the management trustees and 5 appointed by the business manager of the union. Those representing the union were Buck Hano, Pete Schilling, L. D. Attuso, A. J. Politz and D. L. Alexander, and those representing management were Joseph W. Guitreau - Chairman, R. F. Turner, Bill Bernhard, Jr., Tony Moore, Jr. and Spencer Cosper. Management members may remain members of the union. At the time Joseph Guitreau and Spencer Cosper retained their union membership. (See attachment A for company affiliation.)

Sometime during the campaign Whitey Holden campaigned and let it be known to Miller and others that he would

seek to replace the training coordinator of the Apprenticeship Training School. The reasons are in dispute. The business manager by virtue of his office appoints and may replace the 5 union members of the Joint Apprenticeship Training Committee. Joseph W. Guitreau also known as Billy Guitreau, Chairman of the JATC and vice-president and general manager of National Maintenance Corporation, requested Pearson Holden not to replace the 5 union members on the JATC until after they were able to attend a convention in Jacksonville on July 9th, 1974. This trip was in the nature of a reward for services on the committee. The expenses of the management members of the committee were paid by their respective companies and those of the union representatives by the union. The convention was attended by Paul Miller, Jr. whose expenses were paid by the Educational Trust. Acceding to this request Pearson Holden delayed replacing the members of the committee until after the trip to Jacksonville.

By virtue of the election of June 3rd, 1974, a change in the trustees representing the union on the Education Plan took place. At the time of the election the union trustees serving were A. L. Durbin, Henry Holden, R. C. Atkinson, James Voth and William Elgin. William Elgin and James Voth had been elected independently to their office of trustee. The others held office by virtue of their office in the union. After the election A. L. Durbin and R. C. Atkinson stepped off of the Board of Trustees. Henry Holden was re-elected to a union office. William Elgin and James Voth continued in office. After July 1st, Whitey Holden, business manager, and Haskell Douglas, president, assumed office on the Board of Trustees by virtue of their election. Henry Holden remained on by virtue of his re-election. James Voth and William Elgin remained on by virtue of prior election as trustees. On June 20th while the old union trustees were in office, on motion by Frederick (M), seconded by Moore (M), Paul Miller was given a vote of confidence. The motion passed unanimously.

The management members of the trustees remained the same after the union election. They were R. F. Turner, George Esser, Anthony Moore, Sr., E. C. Frederick and Sidney Blanchard.

At the meeting of August 1st, 1974, a motion was made by Whitey Holden (U) and seconded by Henry Holden (U) to remove Paul Miller, Jr. as training coordinator. The motion was withdrawn. A substitute motion by E. C. Frederick (M) seconded by Blanchard (M) to get a recommendation from the JATC as to whether or not the apprenticeship training coordinator should be replaced. On the vote, Whitey Holden, William Elgin, James Voth, Haskell Douglas (union) voted for, Sidney Blanchard, E. C. Frederick, Tony Moore and George Esser (management) voted for. Henry Holden (union) against, absent R. F. Turner (management). The vote of the trustees was communicated to the JATC and later confirmed in writing. On August 7, 1974, Whitey Holden as business manager appointed 5 union representatives to the JATC. They were A. J. Blanchard, Ronald Dale Lee, Buddy Rousseau, Harold Huff and Elmus Corley. The management members remained the same. (See JATC above). At a meeting held the same evening with all members of the JATC present, the committee minutes reflect as follows:

> The following resolution was passed. Motion by Mr. Lee and Mr. Rousseau that committee recommend to the Board of Trustees that Paul Miller be replaced as coordinator. Motion passed by majority but not unanimous vote.

This was reported to the Trustees and on October 3, 1974, the trustees on motion by Whitey Holden seconded by Henry Holden voted to replace Paul Miller as coordinator as recommended by the JATC, replacement to be approved by the Board of Trustees. Voting for the motion were 4 union representatives, H. Holden, W. Holden, W. Elgin and H. Doug-

las and 4 management trustees, S. Blanchard, E. Frederick, R. Turner and G. Esser, voting against J. Poth (union) and T. Moore, Jr. (management). Paul Miller Jr. was notified by letter of the action of the Trustees and advised he would be terminated November 1, 1974. His membership in the union was not affected and his right to employment through the union and under the collective bargaining agreement was not affected. After his termination he was referred out of the hall by the union and is presently employed.

He subsequently filed this suit and charges with the National Labor Relations Board against the Educational Trust Fund, and against Local 198.

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